

Chapter 5.30

AUCTIONS

Sections:

- 5.30.010 Definitions.**
- 5.30.020 Compliance with chapter requirements.**
- 5.30.030 Applicability—Exemptions.**
- 5.30.040 Auctioneer's license—Required.**
- 5.30.050 Auctioneer's license—Application.**
- 5.30.060 Inventory of sale articles.**
- 5.30.070 Auctioneer's license—Issuance conditions.**
- 5.30.080 Auctioneer's license—Fee.**
- 5.30.090 Auctioneer's license—Bond.**
- 5.30.100 Auctioneer's license—Not transferable.**
- 5.30.110 Auctioneer's license—Denial or revocation conditions.**
- 5.30.120 Denial or revocation—Notice of hearing.**
- 5.30.130 Auction house license—Required.**
- 5.30.140 Auction house license—Fee.**
- 5.30.150 Transient auction house license—Required when—Term.**
- 5.30.160 Transient auction house license—Fee.**
- 5.30.170 Auction house licenses—Bond requirements.**
- 5.30.180 Conformity with other laws.**
- 5.30.190 Sales to be on successive days.**
- 5.30.200 Licensee's continuous attendance required.**
- 5.30.210 Merchandise—To be labeled.**
- 5.30.220 Merchandise—To be in state for 15 days.**
- 5.30.230 Truthful representation of merchandise.**
- 5.30.240 Reserved right of seller to bid.**
- 5.30.250 Seller bidding at sale without reserve prohibited.**
- 5.30.260 Receipts for merchandise—Commissions.**

- 5.30.270 Recordkeeping requirements—Generally.**
- 5.30.280 Recordkeeping requirements—Valuable articles.**
- 5.30.290 Purchaser's right to return merchandise for full refund.**
- 5.30.300 Valuable articles defined—When sale of valuable articles prohibited.**
- 5.30.310 Unlawful activities designated.**
- 5.30.320 By-bidders prohibited.**
- 5.30.330 False representations prohibited.**

5.30.010 Definitions.

For the purpose of this chapter, the following words shall have the following meanings:

A. "Auctioneer" means any person who conducts a public, competitive sale of property by outcry to the highest bidder.

B. "Auction house" means a place of business where auctions are conducted and personal property sold at auction.

C. "Transient auction house" means any place, whether indoors or outdoors, located within the city, where any goods, wares, merchandise or articles of value are offered for sale at auction, and which is neither the permanent place of business for auction sales nor a permanent business that has an auction sale to dispose of its inventory, furnishings and business equipment as it goes out of business.

5.30.020 Compliance with chapter requirements.

No personal property (goods, wares or merchandise) shall be sold at auction in the city, except in compliance with this chapter.

5.30.030 Applicability—Exemptions.

The provisions of this section shall not be applicable to auction sales conducted by trustees or referees in bankruptcy, executors, administrators, receivers or other public officers acting under judicial process, nor to the sale of real property at auction, nor shall it apply to any auction held for charitable or benevolent

purposes or for any church, fair, festival or bazaar, nor to an auction wherein the general public is not invited nor permitted to participate as bidders, and where the bidding is restricted to wholesalers or retailers purchasing for resale.

5.30.040 Auctioneer's license—Required.

It is unlawful to sell or cause to permit to be sold at auction any personal property (goods, wares or merchandise) in the city unless such sale is conducted by an individual who has applied for and obtained an auctioneer's license from the city.

**5.30.050 Auctioneer's license—
Application.**

The form on which application shall be made for an auctioneer's license shall require the following information:

- A. Name of the applicant;
- B. Residence and business address of the applicant;
- C. The length of time for which an auctioneer's license is desired;
- D. A statement as to whether or not the applicant holds, or has held, an auctioneer's license from any state, municipality, governing body or licensing authority; a list of such licenses and a statement of the time, place, and by whom issued; a statement as to whether any state, municipality, governing body or licensing authority has ever refused to issue or renew an auctioneer's license to the applicant, together with a full and accurate statement as to the reasons for any such refusal; and a statement as to whether any state, municipality, governing body or licensing authority has ever revoked an auctioneer's license held by the applicant, together with a full and accurate statement as to the reasons for any such revocation;
- E. A statement as to whether or not the applicant has ever been convicted of any crime involving moral turpitude and the nature of the offense, and the punishment or penalty

assessed therefor;

F. A photograph of the applicant taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner; and

G. The fingerprints of the applicant and the names of at least two reliable property owners of the city, who will certify as to the applicant's good moral character and business responsibility, or, in lieu of the names of references, any other available evidence as to the good moral character and business responsibility of the applicant as will enable an investigator to properly evaluate his moral character and business responsibility. The city license officer may waive this requirement with respect to an application for renewal of an auctioneer's license by an individual holding an unexpired auctioneer's license issued under this section who has in a previous application under this chapter complied with this requirement.

5.30.060 Inventory of sale articles.

A. At least 15 days prior to every auction, a true and correct inventory of items to be sold shall be filed with the city license official. Such inventory shall:

1. List the articles proposed to be sold at sale by auction;
2. Give any identifying numbers or marks which may be upon the articles to be sold;
3. Indicate opposite the description of each article whether the same is new or used; and
4. List each of the articles described in the inventory with a number; provided, however, that no article need be listed in the inventory that has a retail value of less than \$5.

B. Upon the license official's receipt of the inventory, he shall immediately forward it to the police department for investigation and/or inspection of inventory to establish, insofar as possible, that the property thereon

listed is not contraband or otherwise illegally for sale. After the investigation, the police department shall issue a written report to the license official within ten days after receipt of the inventory, and no auction may be held until the report is received by the official, the auction is approved by the manager, and the appropriate license issued by the city.

C. It is unlawful to sell at auction any item not listed on the inventory as set forth above.

5.30.070 Auctioneer's license—Issuance conditions.

Before issuing an auctioneer's license, the license official shall refer the application to the police department, who shall cause to be made such investigation of the applicant's moral character and business responsibility as he deems necessary for the protection of the public good, except that the license official may waive this requirement with respect to an application for renewal of an auctioneer's license by any individual holding an unexpired auctioneer's license issued under this chapter if an investigation of such applicant's moral character and business responsibility has been made under this section in connection with a prior application for an auctioneer's license under this chapter. The police department shall cause the investigation herein provided for to be made within a reasonable time, and shall certify to the license official whether or not the moral character and business responsibility of the applicant are satisfactory.

5.30.080 Auctioneer's license—Fee.

The fee for an auctioneer's license shall be as specified on the fee schedule adopted pursuant to section 5.06.050.

5.30.090 Auctioneer's license—Bond.

A. Every applicant for an auctioneer's license shall file with the city a cash bond or irrevocable letter of credit in the amount \$5,000, in a form acceptable to the city attor-

ney, conditioned that the applicant, if issued a license hereunder, will comply fully with all city ordinances and other applicable laws, rules and regulations, will render true and strict accounts of all his sales to any person or persons employing him to make the same, will not practice any fraud or deceit, and will pay all damages that may be sustained by any person by reason of any fraud, deceit, negligence or other wrongful act on the part of the licensee, his agents or employees in the conduct of any auction or in the exercise of the calling of auctioneer.

B. A liability insurance policy that conforms to the above requirements and is issued by an insurance company authorized to do business in Utah may be permitted by the city attorney, in his discretion, in lieu of a bond.

C. An auctioneer employed by one holding an auction house license or a transient auction house license, in lieu of filing a bond as set forth in section 5.30.090A or certificate of insurance, may file a notarized affidavit from the license holder that affirms that the applicant is an employee, that the license holder is responsible for all actions of his employee, and that the employee is covered by a valid bond as above required.

D. It is unlawful for any auctioneer who files a certificate of employment with an auction house licensee or transient auction house licensee to conduct an auction except under the direct supervision of such licensee.

5.30.100 Auctioneer's license—Not transferable.

Neither the license nor the permit granted under the provisions of this section shall be transferable, nor shall the same be loaned or used by any other person.

5.30.110 Auctioneer's license—Denial or revocation conditions.

An auctioneer's license may be revoked by the manager upon recommendation of the city's license official. An application for issu-

ance or renewal of such license may be refused by the manager if, after notice and hearing, it determines that:

A. The applicant or license holder is not an individual of good moral character and business responsibility; or

B. The application of the applicant or license holder contains any false, fraudulent or misleading material statements; or

C. The applicant or license holder has made any false, fraudulent or misleading material statement in the course of conducting an auction sale of, or in offering for sale at auction, any real or personal property (goods, wares or merchandise) in the city; or

D. The applicant or license holder has perpetrated a fraud upon any person, whether or not such fraud was perpetrated in the conduct of any auction in the city; or

E. The applicant or license holder has violated any of the statutes of the state relating to auctions or auctioneers; or

F. The applicant or license holder has been convicted of any crime or misdemeanor involving moral turpitude; or

G. The applicant or license holder has conducted an auction sale, or offered for sale at auction, any real or personal property (goods, wares or merchandise) in the city in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

5.30.120 Denial or revocation—Notice of hearing.

Notice of the hearing provided for in section 5.30.110 shall be given in writing to the applicant or license holder, as the case may be. Such notice shall be mailed, postage prepaid, to the applicant or license holder, as the case may be, at his last known address at least five days prior to the date set for hearing. The applicant or license holder shall have the right to be represented at such hearing by counsel.

5.30.130 Auction house license—Required.

It is unlawful for any person to engage in the business of, or keep, conduct or operate an auction house in the city, without first obtaining a license to do so.

5.30.140 Auction house license—Fee.

The fee for an auction house license shall be as specified on the fee schedule.

5.30.150 Transient auction house license—Required when—Term.

It is unlawful for any person to engage in business as a transient auction house without applying for and obtaining a transient auction house license from the license official. No such licensee shall be relieved from the provisions of this chapter by reason of temporary association with any licensed dealer, trader, merchant or auctioneer, or by reason of conducting such temporary or transient business in connection with or as a part of or in the name of any other licensed dealer, trader or merchant auctioneer.

5.30.160 Transient auction house license—Fee.

The license fee for engaging in business as a transient auction house shall be as specified on the fee schedule adopted pursuant to section 5.06.050.

5.30.170 Auction house licenses—Bond requirements.

The applicant for a license for an auction house or a transient auction house shall file with the city a cash bond or an irrevocable letter of credit acceptable to and approved by the city attorney in the sum of \$10,000, which shall indemnify and run to the city, and any person injured or damaged through dealing with the licensee, or their employees or agents, and be in full force and effect for the year in which they obtain a license. It shall be conditioned on the fact that if the applicant is

issued such license, the licensee will fully comply with all provisions of the ordinances of the city and the statutes of the state regulating and concerning auctions and auctioneers, will render true and strict accounts of all auction sales to any person or persons employing such auctioneer to make the same, will not practice any fraud, deceit, or make any material misrepresentations of fact with reference to property from any auction sale conducted under the license, and will pay all damages which may be sustained by any person by reason of any fraud, deceit, negligence or wrongful act on the part of the licensee, his agents or employees, and the conduct of the auctioneer in the exercise of the call of auctioneer.

5.30.180 Conformity with other laws.

Nothing in this section shall be deemed to exempt any auction house or auctioneer, or the seller of any goods sold at auction, from any license, tax or other ordinance of the city, nor from any of the laws of the state to which any of them may be subject.

5.30.190 Sales to be on successive days.

All auction sales shall be held on successive days, Sundays and legal holidays excepted.

5.30.200 Licensee's continuous attendance required.

The licensee or, if a corporation or other business entity, one of the officers of the licensee, shall remain in continuous attendance at any auction conducted by the licensee.

5.30.210 Merchandise—To be labeled.

A. Before any sale is made at auction, the licensee must attach to each article to be sold that has a retail value of \$5 or more a card with the number of the article endorsed thereon, so that the number corresponds to the article as it is described in the inventory on file with the license official.

B. No article that has a retail value of \$5

or more shall be sold at auction other than the merchandise described and set forth in the inventory on file with the license official.

5.30.220 Merchandise—To be in state for 15 days.

It is unlawful for anyone to sell or offer for sale at auction any merchandise unless the merchandise shall have been within the state at least 15 days immediately prior to the sale or offer for sale. However, livestock shall only be required to be within the state for at least two days prior to said auction.

5.30.230 Truthful representation of merchandise.

All sales and all persons participating in sales must truly and correctly represent at all times to the public attending such auction the facts in respect to quality of the sale merchandise.

5.30.240 Reserved right of seller to bid.

The right to bid may be reserved expressly by, or on behalf of the seller. Notice of such reservation shall be posted, and shall remain posted throughout the auction sale in a prominent and conspicuous place where the sale is being conducted, in letters large enough to be reasonably visible to any person with normal vision who may attend the sale, reading substantially as follows: Seller reserves the right to bid on any article at any time.

5.30.250 Seller bidding at sale without reserve prohibited.

Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself, or to employ or induce any person to bid at such sale or on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated

as fraudulent by the buyer.

**5.30.260 Receipts for merchandise—
Commissions.**

It shall be the duty of all licensed auctioneers to receive all articles that may be offered for sale at auction and give receipts therefor. At the close of any sale, which must be made as the owner directs, the auctioneer shall deliver a fair account of such sale and pay the amount received for such articles to the person entitled thereto, deducting therefrom a commission not to exceed ten percent on the amount of the sale.

**5.30.270 Recordkeeping requirements—
Generally.**

In every case where an article is sold for \$5 or more, the licensee shall keep a complete record of all such sales made at an auction, showing the name and address of each purchaser, a description of each such article sold, including the number thereof, corresponding with the numbers shown upon the inventory on file with the license official, and the date of each sale. The record shall be open at all times to inspection by the license official.

**5.30.280 Recordkeeping requirements—
Valuable articles.**

Any auction house licensee providing auction house facilities for auctioneers of valuable articles, as that term is defined in section 5.30.300 shall, within a period of ten days following the final day of auction of such valuable articles, provide the license official with complete records of all sales of valuable articles, including:

A. The names and addresses of all purchasers of all valuable articles at such auction, and the date upon which such purchase was made;

B. A description of the valuable article purchased, and the purchase price paid for such article;

C. The name and address of the auction-

eer selling such article, and the name and address of the responsible person or entity on whose behalf the auctioneer made such sale; and

D. The name and address of the auction house licensee.

5.30.290 Purchaser's right to return merchandise for full refund.

A. Purchasers at auctions of valuable articles, as that term is defined in section 5.30.300, may return such articles for a period of 90 days to the auction house licensee responsible, and receive from the licensee full refund upon tender of the merchandise with proof of purchase. Failure of the auction house licensee to provide a refund within a period of five days after presentation of the merchandise and demand for refund shall result in loss of the auction house license and forfeiture of the posted bond to the extent necessary to satisfy the demand of claimants under this section. To the extent that an auction house licensee fails to meet such claims, or the amount of the posted bond required under section 5.30.170 is insufficient to meet the claims of purchasers returning merchandise under the provisions of this section, then the auction house licensee shall be liable to such purchasers directly.

B. All auction houses shall post a notice in a prominent, conspicuous place wherein any auction sales are being conducted, in letters large enough to be visible to any person with normal vision who may attend such sale, reading substantially as follows: Purchasers of merchandise acquired at this auction may, for a period of 90 days from the date of purchase, return such merchandise to (the auction house licensee) and receive the full refund of any amounts paid for such merchandise.

5.30.300 Valuable articles defined—When sale of valuable articles prohibited.

It is unlawful to offer for sale at auction or sell at auction any valuable article, defined as

gold, silver-plated ware, clocks, watches, oriental rugs or rugs purported to be from the middle east or eastern part of the world, diamonds or other precious or semiprecious stones or any imitation thereof, glassware, china, linens or jewelry, or any article purporting to be or represented as any of the above articles, between the hours of 6:00 p.m. and 8:00 a.m. of the following day.

5.30.310 Unlawful activities designated.

All auctioneers are forbidden to conduct their sales in such manner as to cause people to gather in crowds on the sidewalks so as to obstruct the same; nor shall they use immoral or indecent language in crying their sales, or make or cause to be made noisy acclamations such as ringing of bells, blowing of whistles, or otherwise, though not enumerated here, through the streets in advertising their sales; and no bellman or crier, drum or fife or other musical instrument or noise-making means of attracting the attention of passersby, except the customary auctioneer's flags, shall be employed or suffered to be used at or near any place of sale or at or near any auction room, or near any auction whatsoever.

5.30.320 By-bidders prohibited.

It is unlawful for any person to act at any sale by auction as a by-bidder or booster, to buy in behalf of the auctioneer or owner, or to increase the price of the article to be sold, or to make any false bid.

5.30.330 False representations prohibited.

It is unlawful for any auctioneer, when selling or offering for sale at public auction any goods, wares or merchandise under the provisions of this chapter, to describe the goods, wares or merchandise in any fraudulent, misleading, untruthful or unwarranted manner tending to mislead bidders. It shall be unlawful for any auctioneer or any person associated with him to substitute an article sold for another.